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November 26, 1997

Office of the Secretary
Federal Communications Commission
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Washington, DC 20554

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To Whom It May Concern:

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Thank you for the opportunity to provide reply comments on the issue of access to telecommunications services, equipment and customer premises equipment by persons with disabilities.

Enclosed you will find an original of reply comments submitted by the World Institute on Disability along with nine copies.

Thank You,


Betsy Bayha
Acting Director
Division of Technology Policy

DIVISION ON
TECHNOLOGY
POLICY

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**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.**

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In the Matter of)
Implementation of Section 255 of the)
Telecommunications Act of 1996)

WT Docket No. 96-198

Access to Telecommunications Services,)
Telecommunications Equipment, and)
Customer Premises Equipment)
By Persons with Disabilities)

REPLY COMMENTS

I. Introduction

The World Institute on Disability respectfully submits these reply comments in response to comments filed in the Federal Communication Commission's (FCC) Notice of Inquiry (NOI) regarding access to telecommunications services, telecommunications equipment and customer premises equipment (CPE) by persons with disabilities.

The World Institute on Disability (WID) is a research, training and policy development center that is led by persons with disabilities. Its work focuses on significant issues in public policy that have potential to contribute towards a vision of a world in which all people with disabilities exert control over their lives. WID was founded ten years ago by leaders from the disability rights and independent living movements; it has grown into an internationally recognized organization that has a reputation for leadership and innovation.

In the area of Technology Policy, WID is recognized as a national leader for promoting access to telecommunications for people with disabilities through universal design. Universal design, or inclusive design, seeks to build in access to telecommunications technology at the blueprint stage, instead of relying on costly and clumsy retrofits. This approach increases the availability of accessible technologies, integrates access features compatibly into the technology and reduces cost.

As a member of the Telecommunications Access Advisory Committee (TAAC), WID is participating in discussions regarding the development of guidelines for implementing Section 255 of the Telecommunications Act of 1996. WID commends the Federal Communications Commission for opening this proceeding and is pleased to comment on it.

II. The FCC Should Promulgate Access Rules

WID strongly concurs with arguments presented by the National Association of the Deaf the Consortium for Citizens with Disabilities Task Force and others that the FCC should promulgate rules for enforcement of Section 255 of the Act. The Commission's active involvement is critically important for ensuring that the spirit and the letter of Section 255 are fully implemented. Merely articulating a policy or responding to consumer complaints is not sufficient to achieve full enactment. Companies will need guidance from the FCC on how to comply -- in particular new telecommunications companies entering the market to capitalize on the competitive opportunities presented by deregulation. Many of these companies will not be familiar with the concept of universal design or the critical importance of designing flexibility into their products so that people with disabilities can use them. Indeed, even many of the Regional Bell Operating Companies still need guidance vis a vis accessibility, even though they are far ahead of most other telecommunications providers. While the regional bells have understood the importance of universal design and have long supported the goal of full inclusion for customers with disabilities, there is still a lack of uniform access standards, and a need to encourage consistency of effort among various telecommunications providers regarding the development and implementation of universal design policies and procedures.

Promulgating rules is consistent with the FCC's past activities in the area of disability access. The Commission has distinguished itself in implementing a broad array of access legislation including relay services, hearing aid compatibility rules and the Caption Decoder Circuitry Act mandating closed caption technology for most televisions. The Commission should continue to build upon its previous endeavors by issuing rules on Section 255.

World Institute on Disability

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WID strenuously disagrees with the position taken by Microsoft that the FCC should limit itself to promulgating voluntary guidelines, and that complaints be resolved on a case-by-case basis with the burden of proof on the complainant. This "hands off" approach would result in little change from the present situation in which people with disabilities face widespread inequities and limited access to the full range of telecommunications technology. Indeed, it would hit consumers with the double whammy of being denied access to the technology, and then having to bear the onus of pursuing a complaint to remedy the situation. While several companies, including Microsoft, have voluntarily incorporated some access features into their technology, they are the notable exceptions rather than the rule. The intent of Section 255 was to ensure broad access to telecommunications technologies for people with disabilities. Neither voluntary guidelines nor a complaint resolution mechanism can be relied upon to ensure the fulfillment of that mandate.

Likewise, Microsoft's argument that competitive market forces alone will create greater availability of accessible technology completely ignores the historical conditions that led to the need for Section 255 in the first place. Since the invention of the telephone, people with communication disabilities have been excluded from fully participating in telecommunications. Section 255 is just the latest effort to remedy the historic inequities that have denied people with disabilities the opportunity to fully participate in society through the use of communications technology. Experience has shown that free market forces cannot solve all problems, and that is particularly true in the area of disability access. Otherwise, we would already have seen greater proliferation of accessible and universally designed technology. People with disabilities are rarely recognized as a viable market and their needs are often ignored by manufacturers -- intentionally or unintentionally. Unfettered market forces will result in the increased consumer choice of products and services, as Microsoft states, but without rules promulgated under Section 255, it is highly likely that most of those products will be inaccessible to people with disabilities and the chasm will ever widen between those who benefit from new communications technologies and those who do not. Consider the recent deployment of inaccessible products and services such as voice mail, call waiting, wireless telephony and a host of other

communications products that have come to market in recent years. This trend will only continue unless the FCC promulgates clear rules and a compliance mechanism under Section 255.

III Both Process Guidelines and Performance Guidelines are Needed

As the concept of universal design evolves, we see that it is as much the outcome of following particular processes as it is incorporating specific performance standards into technology. To achieve access, both are needed. WID concurs with the arguments put forth by Inclusive Technologies and the National Association of the Deaf that process guidelines should be implemented broadly and should include business practices. For universal design to take root and flourish within a particular company, access must be considered in all aspects of the business, including market research, advertising and customer support as well as technical design. This will also ensure that both the product and the support services that comprise the products 'usability' are also accessible.

Process guidelines also work hand in hand with performance guidelines. Companies who want to ascertain whether their product meets certain performance and usability parameters and who do not have the benefit of specific performance standards for that product may find it easiest to have people with disabilities test the product for functionality and use their feedback to guide the design process. Consultation with disabled individuals who are knowledgeable about accessibility issues should be a required part of the process guidelines, and this consultation should take place at all phases of development, from concept to deployment.

Process guidelines should not be the sole determinant of whether a manufacturer has complied with Section 255. WID concurs with the Massachusetts Assistive Technology Partnership that it is essential to strike an appropriate balance between process and performance guidelines. Inaccessible performance cannot be disregarded on the basis of a satisfactory process plan. Companies cannot use the process guidelines as a subterfuge to deploy inaccessible technology. In instances where access is readily achievable, non-

complying companies should be required to address the access barrier.

IV The FCC Should Recognize Convergence of Technology in Defining CPE

While the definitions of telecommunications equipment and CPE may be fairly distinct at present, rapid convergence of technology is blurring the lines between telecommunications appliances and network functions. The FCC should interpret CPE broadly, to include network services, software and hardware. Section 255 should apply to all aspects of these areas insofar as they provide telecommunications equipment or services. Because this NOI and the ensuing decisions made by the FCC will have an impact on telecommunications services for a very long time, it is essential that the Commission think broadly and in a forward direction regarding how convergence and other technological advancements will affect the definition of customer premises equipment. The Trace Research and Development Center has presented compelling arguments for incorporating software that provides a user interface into the definition of CPE, noting that we are not far away from a time when much of the telecommunications technology we use will not be inherent in a piece of hardware, but rather will be carried to the hardware via software.

WID strongly objects to the proposal from Microsoft that every piece of telecommunications equipment be exempted from Section 255 regulations during its first year in the market. Such a provision would needlessly delay the availability of accessible technology. It would set up a situation in which manufacturer would be forced to retrofit their technology to provide access. Experience has shown that retrofit solutions are costly and unwieldy. For example with network voice mail, we have seen cases where the cost of developing a retrofit to ensure access for TTY users would equal or surpass the cost of developing the initial technology. Microsoft's position also overlooks the provisions for compatibility contained in Section 255. At the bare minimum, manufacturers should have little difficulty making their products compatible with peripheral assistive technology and should, in no way be exempted from their obligations to do so under Section 255.

WID concurs with the argument of the National Association of the Deaf that companies who do not comply with disability assessments from the earliest stages of their product research and development should not be permitted to argue that *retrofitting* is not readily achievable. The test of compliance with Section 255 should be based upon whether it would have been readily achievable for a company to have incorporated access or compatibility at the initial R&D phase.

V Cost Should be Considered in Broad Terms

The FCC should consider cost issues in broad terms as they pertain to both financial resources of manufacturers and the cost of compliance under the definition of readily achievable. On the first point, the National Association of the Deaf has shown that under the readily achievable standard as enforced by the Department of Justice, parent corporations may be held responsible for bearing the cost necessary to provide access to local subsidiaries. WID believes that legal precedent on this issue should prevail.

Regarding costs to companies of learning how to build access into technology, WID concurs with the Trace Research and Development Center that companies need to view those costs as a percentage of their overall spending on R&D. Furthermore even if the initial investment is high, it is quite likely that costs will stabilize and probably will decrease once a company has instituted universal design processes within its activities and increased its knowledge about designing for access. Any discussion of cost should necessarily include an analysis of the benefits that accrue to a company by opening up new markets for technology and improving the usability of products. But moving beyond the direct costs and benefits to one individual company, the Commission must consider the broad cost to all of us if non-compliance results in the exclusion of millions of Americans from fully participating in telecommunications.

The ability to use telecommunications products and services has a fundamental bearing on access to education, job training, employment, communication and recreation. Under Section 255 the FCC is empowered with unprecedented opportunity to reverse generations of discrimination and exclusion of people with disabilities from participating in the

communications revolution. The benefits that will accrue to society as a whole through strong enforcement of Section 255 cannot be underestimated. As information technologies comprise an ever larger share of the national economy and become the lynchpin of participation in so many aspects of public and private life, it is incumbent on the FCC to take decisive action on behalf of people with disabilities and promulgate rules under Section 255.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Betsy Bayha", with a long horizontal flourish extending to the right.

Betsy Bayha
Acting Director,
Technology Policy